



66-2002-030  
II-A-096

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 13 1998

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**CERTIFIED MAIL #**  
**RETURN RECEIPT REQUESTED**

Mr. Kenneth I. Roane  
Vice President-Refining  
National Cooperative Refinery Association  
1391 Iron Horse Road  
P.O. Box 1404  
McPherson, Kansas 67460

**Re: Notice of Violations AED/MSEB #4775**

Dear Mr. Roane:

On May 2, 1997, the National Cooperative Refinery Association (NCRA) notified the U.S. Environmental Protection Agency (EPA) in writing that on May 1, 1997, gasoline having a Reid Vapor Pressure (RVP) of greater than 9.0 pounds per square inch (psi) was sold, offered for sale, dispensed, supplied, offered for supply, transported or introduced into commerce from the NCRA gasoline terminal in Council Bluffs, Iowa. This action was in violation of section 211(h) of the Clean Air Act (Act), 42 U.S.C. § 7545(h) and regulations at 40 C.F.R. § 80.27, which prohibit refiners and distributors from selling, offering for sale, dispensing, supplying, offering for supply, transporting or introducing into commerce gasoline which exceeds 9.0 psi in the month of May in the applicable volatility attainment areas served by the Council Bluffs terminal. The law subjects violators to a civil penalty of not more than the sum of \$25,000 for every day of violation and the amount of economic benefit or savings resulting from the violation.

Subsequent EPA investigation confirmed the information

received from NCRA regarding the actions of the terminal and confirmed that NCRA had made certain remedial efforts regarding the gasoline that was out of compliance.

The Administrator of the Environmental Protection Agency has authority to mitigate the statutory penalty of \$25,000 per violation per day established by the Act. The EPA encourages settlement of such matters rather than initiating litigation. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged violations are corrected promptly.

Moreover, the EPA has established a policy that encourages actions by regulated parties to discover, disclose, correct and prevent violations (Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 60 FR 66706 (Dec. 22, 1995), also known as the "Audit Policy"). The EPA has reviewed the applicability of the Audit Policy to this matter and has determined that it is appropriate to reduce the gravity portion of the penalty, providing that NCRA demonstrates that appropriate actions are taken to prevent future violations.

After consideration of the gravity of the violations, the economic benefit received, the size of your business, your history of compliance with the Fuels Regulations, your efforts to correct the violations, your voluntary discovery of the violations and prompt reporting of the violations, and your efforts to prevent future violations (as set forth in the enclosed Settlement Agreement), EPA has determined that a penalty of \$5,500 is appropriate.

Enclosed with this Notice of Violations is a proposed Settlement Agreement to settle this matter consistent with the terms outlined above. If NCRA is unable to promptly agree to these terms, the EPA reserves the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court asking for substantial civil penalties as well as appropriate injunctive relief. Moreover, the settlement is conditioned upon the completeness and accuracy of the representations made by NCRA.

The EPA official designated below has been assigned to this case. Please contact him regarding this Notice of Violations and the enclosed Settlement Agreement.

Ervin Pickell, Attorney/Advisor  
U.S. Environmental Protection Agency  
Western Field Office  
12345 West Alameda Parkway  
Suite 214  
Denver, CO 80228  
(303) 969-6485

Please let me emphasize that while we take our obligation to enforce these requirements seriously, the EPA desires to promote compliance by reducing penalties in appropriate cases where the violations are voluntarily discovered and promptly disclosed and corrected. The settlement terms in this case reflect that policy.

Please sign the settlement agreement and return the original to Ervin Pickell at the Denver address set forth above. Thank you for your cooperation in this manner.

Sincerely yours,

*Bruce C. Buckheit*  
Bruce C. Buckheit, Director  
Air Enforcement Division

Enclosure